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No. 81-16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

EARLINE CALDWELL, *et al.*,
Petitioners,

v.

STATE OF MISSOURI, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, ET AL.

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STATE OF MISSOURI, *et al.*,
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, ET AL.

Petitioners, Caldwell, *et al.*, plaintiffs-intervenors have asked this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on February 13, 1981, *Liddell, et al.*, v. *Board of Education of the City of St. Louis, et al.*, Nos. 80-1458, 80-1494, 80-1531, 80-1599 and 80-1735. Petitioners' Appendix ("Pet. A.") - 1. The petition for rehearing was denied by the appellate court on March 19, 1981.

Respondents, the Board of Education, its members, officers and top administrators ("City Board") urge this Court to deny the present Petition.

STATEMENT OF THE CASE

This case was instituted in February, 1972, by a group of black parents, Liddell, against the City Board. The charges were racial discrimination in the public schools in violation of the Fourteenth Amendment.

During the nine years of this litigation six parties were added to the original ones: the Petitioners (black parents and the NAACP), the United States, the State of Missouri (and some of its top officials), the City of St. Louis and Adams (white parents). *Liddell* v. *Caldwell*, 546 F.2d 768 (8th Cir. 1976) *cert. denied*, 433 U.S. 914 (1977).

In 1979 the trial court rendered its judgment in favor of the defendant City Board, but this was overturned by the Eighth Circuit en banc on March 3, 1980, *Adams* v. *United States*, 620 F.2d 1277 (8th Cir. 1980) *cert. denied*, 101 S.Ct. 88 (1980). The court ordered that the City Board prepare a desegregation plan within the guidelines which were set forth in the opinion.

On the subject of costs and fees, the appellate court ruled that the Adams group was not entitled to a fee, but the Liddell group and Caldwell could be, with the following directions:

> "On remand, the district court shall determine reasonable attorneys' fees for the Liddell group (and for the Caldwell group, if they requested them) in accordance with the general principles set forth in *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)." (620 F.2d at 1297)

Different directions were given about the determination of fees for appellate services:

> "The appellants requesting attorneys' fees on appeal shall submit a motion to that effect within thirty days of the filing of this opinion. Documentation of their claims shall be included." *(id.* at 1297)

On March 30, 1980, Caldwell filed their Motion for fees for their appellate services, supported by the affidavits of their two principal lawyers, and aggregating twenty-five pages (copy attached as Appendix 1). No objection or question is made anywhere in this Motion or supporting material to the fact that the determination of the fee was to be made by the Eighth Circuit rather than in the District Court.

By Order dated April 28, 1980,[1] the seven judges of the appellate court made the following allowances (copy of the Order is attached as Appendix 2):

Hours claimed	Fees requested		Fees allowed
291.00	Liddell	$27,645.00	$ 6,000.00
394.25	Caldwell	$50,205.00	$18,000.00

On remand, following a hearing, the district court entered its order on May 21, 1980, approving the City Board's desegregation plan, holding the State defendants to be "primary constitutional wrongdoers", directing the preparation of a voluntary desegregative plan in cooperation with the suburban districts and suggesting other remedies, *Liddell* v. *St. Louis Board of Education*, 491 F.Supp. 351 (E.D. Mo. 1980).

Four appeals were taken from that Order: the State appealed *inter alia* from the finding of liability and the resulting requirement to pay for one-half of the desegregation expenditures; Adams appealed *inter alia* on the ground that the approved intradistrict plan was too broad, and that the faculty and white students provisions were too strict; and Liddell challenged the plan as inadequate. Caldwell, as stated in their Petition here (p. 8), pressed a three-pronged appeal. First was the challenge of the 50% ceiling placed by the Order upon the level of the black

[1] The date of April *18*, 1980 given in the Petition at 6 is obviously a typographical error.

enrollment in integrated schools (this yardstick was included in the Desegregation Plan, pursuant to the testimony of the government expert Gary Orfield, and was directed to provide some stability in the integration process).[2] Second was the challenge to the district court's denial of leave to file a complaint against the United States. Third was the challenge of the composition of the monitoring committee, and of ex parte communications between the chairman of the committee and the court.

Appellees' briefs were presented by the United States, the City Board and Caldwell opposing the appeals of the State and certain aspects of the appeals of Adams and Liddell.

In its Order of February 13, 1981 in *Liddell* v. *Board of Education of the City of St. Louis, supra,* Pet. App.-1 *et seq.* the Eighth Circuit overruled the contentions of the State, Adams, Liddell and also, but for one item, all the contentions of Caldwell. The limited exception concerns one of the "two minor issues" raised in what Petitioners have defined as the "third" prong of their appeal (Petition, pp. 8-9). Thus, the only success of Caldwell is in one minor issue out of the two which Petitioners admit to represent the least important prong in their appeal.

After reviewing the merits of the issues presented and ruling thereon, the appellate court added that "All parties will bear their own costs in this appeal" (Pet. Appendix, p. 28a). Petitioners moved for clarification or rehearing on the question of their fees, and prayed for an order that costs and attorneys' fees be awarded against the State and the City Board in Petitioners' favor.

In an unreported order entered on March 19, 1981 the Eighth Circuit denied the motion and specifically held that Petitioners were not entitled to attorneys' fees (Pet. App. 39a-40a).

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[2] The 30% to 50% range of black enrollment had been approved by the Eighth Circuit in the prior appeal. *Adams* v. *United States, supra,* 620 F.2d at 1296.

SUMMARY OF ARGUMENT

No real conflict exists between the decision below and decisions of this Court or of other circuits. In its orders of February 13, 1980 and March 19, 1980, the Eighth Circuit has denied Petitioners' application for fees for their appellate services. The ground for this decision is clearly found in the Court's review of the record which discloses that Petitioners are not "the prevailing party". Hence the statutory prerequisite - that the appellant be the prevailing party - is not present and therefore the statutory fee cannot be allowed. Of the broad scope of the three-pronged appeal of Petitioners it is admitted they lost everything but a minor subpoint of the last and least important prong. Hence, Petitioners' cases as *Northcross* involving, as they do, prevailing parties (Petition, pp. 12-13) are inapposite here, and cannot serve as the basis for a conflict warranting consideration by this Court.

Petitioners' contention that a conflict exists between the ruling of the Eighth Circuit in the present case and the Sixth Circuit in the 1979 *Memphis* case is not meritorious. No conflict exists for the reason that Caldwell lost in the appeal under consideration here, whereas in the *Memphis* case plaintiffs won. The issue of failure to articulate the reasons for the denial of a fee award is mooted by Petitioners' concession that a summary denial, without articulating reasons, is appropriate when the reasons are apparent.

The contention that the appellate decision should have ordered a remand to the district court on the fee question does not rise to the level of a conflict with this Court or with other circuits. Even the Petitioners enjoyed the benefit of a direct and more expeditious one-tier determination of their fee by the Eighth Circuit in the April 28, 1980 ruling (App. 2). It is admitted that no rule of general applicability would apply. Hence the issue is one of evaluating the particular facts concerning the appeal. No conflict or other grounds are presented to warrant the intervention of this Court on writ of certiorari.

REASONS FOR DENYING THE WRIT

1. Petitioners contend that they are "the prevailing party" as to the issue of the liability phase of the case and that such status should continue to be recognized and rewarded *ad infinitum.* Caldwell's appellate services in *Adams* v. *United States,* 620 F.2d 1277 (8th Cir. 1980) were terminated with the decision of March 3, 1980. The subsequent fee proceedings, summarized *supra,* were fully concluded and the fee paid and accepted.

The situation in *Liddell* v. *Board of Education, supra,* decided on February 13, 1981, was radically different. *Caldwell* does not even claim that they were successful against the City Board on any of the major issues raised in their appeal, all of which were won by the City Board.

Using Petitioners' own classification of the issues raised in their appeal (Statement of the Case, *supra,* p. 4) they sustained two major failures, while the "minor" gain they realized was offset by "minor" loss, which is likewise admitted here.

By way of contrast, Petitioners' statement with regard to the State defendants asserts without any qualification or limitation:

> "These plaintiffs were completely successful as against the state defendants" (Brief, p. 14).

The juxtaposition between Petitioners' record of success (vs. State) and failure (vs. City Board) is conclusively shown in Petitioners' own words and the facts of the case.

The applicability of the statute is triggered by the determination of the party which prevails. By no stretch of the imagination could Caldwell, who lost on racial balance, on bringing a new action against the United States and on the composition of the monitoring committee, and who won only the narrow and concededly minor point that the chairman of the monitoring committee could not address the judge *ex parte,* be deemed to be the prevailing party on these appeals.

Hence the alleged conflict between the Eighth Circuit in *Liddell* and the Sixth in *Northcross* v. *Board of Education of Memphis City Schools,* 611 F.2d 624 (6th Cir. 1979) *cert. denied* 447 U.S. 911 (1980) and similar cases cited in the Petition, pp. 12-13, is non-existant. The legal posture and the facts of these cases are different and have no relevance here.

None of these cases held or requested that attorneys' fees should be allowed to a losing party. Indeed in one of the phases of the *Northcross* case in which the plaintiffs-appellants were not successful, 489 F.2d 15 (6th Cir. 1973), *cert. denied* 40 L.Ed.2d 313 (1974) it was stated in their 1978 brief:

> "Plaintiffs made and make no claim for expenses and legal services incurred in connection with the above-described appeals... ." *(Northcross,* Nos. 78-1289, -1290, -1291, p. 39, ftn. 17)

In the Fifth Circuit case of *Universal Amusement Co.* v. *Vance,* 559 F.2d 1286, 1300, (5th Cir. 1977 relied upon in the Petition, p. 17) the court was asked to remand the determination of attorneys' fees for two parties. The court remanded one, and disposed of the other saying: "King Arts has not prevailed and is, of course, not entitled to such relief."

2. Petitioners' claim that by holding, without stating the reasons, that Caldwell was not entitled to fees under 42 U.S.C. 1988, the Eighth Circuit "is in direct conflict with this Court's decision in *Northcross* v. *Board of Education of Memphis,* 412 U.S. 427 (1973)" (Pet. at 11). In the *Northcross* case plaintiffs had won on the issues on appeal of the desegregation plan and further desegregation. Nevertheless, the Sixth Circuit denied the fee motion without any determination of the reasons for the denial. This Court reversed and remanded, setting forth the

standard to be followed by the Sixth Circuit.[3] This Court reviewed the pertinent statutory provisions and noted that the allowance of reasonable attorneys' fees under the Civil Rights Act may be made to the "prevailing party" and that under a similar statute attorneys' fees may be awarded "to one who succeeds in obtaining an injunction" (412 U.S. at 428).

No conflict exists with the Eighth Circuit decision for the conclusive reason that Caldwell lost in their appeal from the May 21, 1980 Order in the *Liddell* case and are not entitled to any recovery from the winning City Board, whereas Northcross won in the Memphis case.[4]

Secondly, Petitioner admits that:

> "There are occasions when the reasons underlying a court's denial of attorneys' fees are so apparent from the surrounding circumstances that a summary denial is appropriate." (Petition, p. 12)

This is the situation present here. Petitioners were not the prevailing party at least as to the City Board. The City Board was. Thus Sec. 1988 cannot justify a fee award to Caldwell, as the losing party in this case.

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[3] This was the first case under the Emergency School Aid Act of 1970, 20 U.S.C. 1617 to reach this Court on the attorneys' fees. Silence about the reason in the appellate court's opinion, *supra,* allowed a question as to which standard may have been applied by the Sixth Circuit. No such problem is present here, since the Eighth Circuit has followed the same standard as adopted by this Court since *Wharton* v. *Knefel,* 562 F.2d 550, 557 (8th Cir. 1977).

[4] Northcross' own evaluation leaves no doubt that a complete victory was achieved:

> "plaintiffs prevailed, lock, stock and barrel, in this Court on the Board's appeal...and plaintiffs also completely prevailed on their cross-appeal contentions..." (Brief for Plaintiffs-Appellants, Cause Nos. 78-1289, -1290, -1291, in the 6th Circuit, p. 70).

Caldwell refers also to *Consolidated Freightways Corp.* v. *Kassel,* 49 U.S.L.W. 3743 (U.S. April 6, 1981) (No. 79-1618), *granting certiorari* to - F.2d - (8th Cir. 1980). There the fee application was denied to a plaintiff who - unlike Caldwell - had been successful in the district court, appellate court and this Court. Another distinction between the *Kassel* and the *Liddell* cases is that while the law issue and determinative facts are simple and clear in the *Liddell* case, they show that many possible grounds for the denial of the fee motion have been submitted in *Kassel.*[3]

Also in *Kassel* no briefs were filed in the 8th Circuit concerning fees prior to the original denial, thus depriving the parties of the normal avenue to interpret the ruling. In the pending case, motions and arguments were exchanged as to whether fees should be awarded to Caldwell. The issues were clear. Neither the statute nor other principles of law allow a fee award to a party which lost.

3. Petitioners' contention that the Court of Appeals should defer to the district court the determination of whether attorneys fees have been earned for services on appeal and that failure to comply with the requirement invalidates the determination of that court, with a resulting conflict between the Eighth Circuit and this Court, is incorrect. In the first place, Petitioners admit that "Of course, there appears to be no doubt that a court of appeals has the power to award fees under #1988" (Pet. 17). This conclusion is fully supported by the authorities: *Hutto* v. *Finney,* 437 U.S. 678, 693 (1978); *Hanrahan* v. *Hampton,* 446 U.S. 719, 756 (1980); *Moten* v. *Bricklayers, Masons and Plasterers,* 543 F.2d 224, 240 (D.C. Cir. 1976)

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[3]See Brief of Petitioner in the *Kassel* case, pp. 6-7, listing ten possible grounds for such denial.

Secondly, Petitioners themselves have taken advantage of a direct fee determination by the Eighth Circuit in a prior phase of this same case, only a few months ago (*supra*, p. 3 and Appendix 2). No complaint was registered from Petitioners, no reservations entered of record, no objections were filed against the procedure or the substance, even though the result was about 36% below their prayer. Petitioners are precluded from raising this issue now.

Petitioners rely on *Perkins* v. *Standard Oil Co. of Calif.*, 399 U.S. 222 (1970) as supportive of their position. The very quotation of that case which is made by Petitioners shows that *Perkins* is addressed to the amount of a fee for which fact-finding and evidentiary hearings by the trial court may be needed, rather than the legal determination as to whether any fee is due to the applicant. To the same effect are *Northcross* v. *Board of Education of Memphis*, 611 F.2d 624, 637 (6th Cir. 1979) *cert. denied*, 447 U.S. 911 (1980),[4] and the other cases cited by Petitioners.

These cases only stand for the proposition that when a party is entitled to fees for appellate work, the *amount* should generally be determined first in the district court. The cases do not stand for the proposition that the question of entitlement to fees should ordinarily be decided in the district court. Indeed, the *Vance* case, cited by Petitioners, *supra*, shows that no district court action is required when the applicant is not the prevailing party and therefore - as Caldwell here - not entitled to any fee award.

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[4]The quotation used by Caldwell is as follows:

> "the district court, with its greater facility for evidentiary hearings and fact-finding, should make awards for appellate services in the first instance... ." (Brief, p. 16)

The conclusion given by Caldwell is that the referral of an award to the trial court for initial disposition is "the usual and better practice", but not an across-the-board rule of general applicability. And it is difficult to understand why it would have been a "better practice" to remand for a fee determination when the Court of Appeals, upon being presented with the issue, concluded that no fee should be awarded. Certainly this is not a legal posture calling for certiorari: no conflict is shown, and no public interest issues are presented of sufficient importance to warrant review by this Court.

4. The last contention of the Petitioners is in the nature of an *ad hominem* argument, which evidences an effort to develop a hypothetical conflict. Petitioners hypothesize that the Eighth Circuit has adopted the view that appellate services under Sec. 1988 are "costs" controlled by Fed. R. App. P. 39. On this assumption a conflict is asserted with other circuits and the "implication" of *Roadway Express Inc.* v. *Piper,* 447 U.S. 752 (1980).

This exercise in speculation could hardly be considered as adequate basis for warranting this Court's intervention on certiorari. In point of fact the record dispels the assumptions of the Petitioners.

There is no basis for imputing to the Eighth Circuit lack of knowledge of the difference between costs and attorneys' fees, although there are several statutes which use the two terms interchangeably. Even the statute upon which the petition is predicated provides for "attorney's fee as part of the costs".

The Order rendered by the Eighth Circuit on March 3, 1980 in *Adams* v. *United States, supra,* provides that "the appellants requesting attorneys' fees on appeal shall submit a motion to that effect" (l.e. 1297). Petitioners followed the Court's direction and filed their Motion for "appeal costs" and attorneys' fees (Appendix 1, p. 1). At that time there was no "disarray" in the procedures of the appellate court (compare Petition, p.

15, Section 2). Petitioners understood the language of the Eighth Circuit, knew how to comply with the requirements of the court, and collected their award both on "costs" and on "fees", without making complaints or objections of any sort. At that time Petitioners were the prevailing party, were paid what the court ordered and appeared satisfied with the substance and procedure.

In 1981, Petitioners' situation is different. They did not win the case, they were not the prevailing party, and the Eighth Circuit, which had ample briefs and heard an extended argument, decided against Petitioners virtually on all issues and as a corollary also on the issue of their fee.

The appellate court order of April 28, 1980 leaves no doubt the Eighth Circuit distinguished between fees and costs. Hence Appellate Rule 39 was not relied upon by the appellate court in 1981 as it was not in 1980 and prior thereto, and clearly played no part in the dispostition of the attorneys' fee issue.

Thus, there is no conflict between the decision of the Eighth Circuit based on the controlling premise that a fees' award under Sec. 1988 can only be made to the prevailing party and Petitioner's cases (Pet. 18) such as *Vasquez* v. *Fleming*, 617 F.2d 334, 335 (3rd Cir. 1980) and *Davis* v. *Murphy*, 587 F.2d 362 (7th Cir. 1978) which hold that attorneys' fees are not included as costs under Fed. R. App. P. 39.[1]

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[1] *Roadway Express Inc.* v. *Piper*, 447 U.S. 752 (1980) cited by Petitioners at p. 18, has no actual bearing upon the factual situation, law and issues involved here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief in Opposition of Respondents Board of Education of the City of St. Louis, *et al.*, was mailed, postage prepaid, this 21st day of July, 1981 to:

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APPENDIX

APPENDIX 1

Motion of Caldwell Appellants For Fees

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 79-1468; 79-1470; 79-1471;
79-1477; and 79-1486

Craton Liddell, *et al.*,
Plaintiffs-Appellants,
and
Earline Caldwell, *et al.*,
Intervening Plaintiffs-Appellants,
v.
Board of Education of the City of
St. Louis, *et al.*, and State of
Missouri, *et al.*,
Defendants-Appellees.

Appeals From The United States District Court
For The Eastern District of Missouri
Eastern Division

MOTION OF CALDWELL APPELLANTS FOR AWARD OF STATUTORY COSTS AND REASONABLE ATTORNEYS' FEES FOR SERVICES RENDERED ON APPEAL

Pursuant to leave of Court granted at page 53 of the 7-judge opinion filed herein on 3 March 1980, the Caldwell appellants

(plaintiffs-intervenors below) respectfully move the Court for an award of statutory appeal costs in the amount of $1,716.97, and for an award of reasonable attorneys' fees for services rendered on appeal in the amount of $46,245.00. In support of this motion, the Caldwell appellants show the Court as follows:

1. In its 3 March 1980 slip opinion, at page 52, the Court directed the district court on remand to determine reasonable attorneys' fees for the Liddell group "and for the Caldwell group, if they requested them...." In their motion for leave to intervene as plaintiffs filed in the district court on 16 January 1976 (at page 6), the Caldwell appellants adopted the original complaint filed by the Liddell group on 18 February 1972 which, at page 10, prayed *inter alia* for an allowance of reasonable attorneys' fees. Hence, the Caldwell appellants have "requested" fees and are therefore to be included among "[t]he appellants requesting attorneys' fees on appeal..." Slip op. at 53.

2. Reasonable attorneys' fees for services rendered on these appeals, in which the Caldwell appellants are "prevailing parties," are authorized by 42 U.S.C. §1988 and 20 U.S.C. §1617. The Caldwell appellants are therefore entitled to an award of fees in the absence of special circumstances which would render such an award unjust. *E.g., Northcross* v. *Board of Educ. of Memphis City Schools,* 412 U.S. 427 (1972). There are no such special circumstances here. Moreover, the Caldwell appellants, as intervening prevailing parties, are entitled to recover fees in the same manner and to the same extent as an original prevailing party. *E.g., United States* v. *Board of Educ. of Waterbury,* 605 F.2d 573 (2d Cir. 1979).

3. As prevailing parties, the Caldwell appellants are entitled to recover fees for all time reasonably expended by their counsel on the appeal. *Brown* v. *Bathke,* 588 F.2d 634, 637-38 (8th Cir. 1978); *Crain* v. *City of Mountain Home,* 611 F.2d 726, 729n.7 (8th Cir. 1979); *Northcross* v. *Board of Educ. of Memphis City Schools,* 611 F.2d 624, 635-36 (6th Cir. 1979).

4. The amount of reasonable fees to be awarded is to be determined in accordance with the factors set forth in *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *cert. denied*, 423 U.S. 864 (1975), adopted for this case by the 3 March 1980 slip opinion at pages 52-53. We submit that the Sixth Circuit's recent opinion in *Northcross, supra*, represents the most sensible application of the *Johnson* criteria. As stated in *Northcross*, 611 F.2d at 642-43:

> We have learned through experience, however, that merely providing a check list of factors to consider does not lead to consistent results, or, in many cases, reasonable fees. Many of the factors are overlapping, and there is no guidance as to the relative importance of each factor, or indeed, how they are to be applied in a given case. We conclude that an analytical approach, grounded in the number of hours expended on the case, will take into account all the relevant factors, and will lead to a reasonable result. [1] The number of hours of work will automatically reflect the "time and labor involved," "the novelty and difficulty of the question," and "preclusion of other employment." [2] The attorney's normal hourly billing rate will reflect "the skill requisite to perform the legal service properly," "the customary fee," and the "experience, reputation and ability of the attorney." [3] Adjustments upward may be made to reflect the contingency of the fee, unusual time limitations and the "undesirability" of the case. Thus, applying the approach used in this decision will result in an award reflecting those considerations traditionally looked to in making fee awards, but will also provide a logical, analytical framework which should largely eliminate arbitrary awards based solely on a judge's predispositions or instincts.

Applying the *Johnson* criteria, as summarized in the *Northcross* three-part analytical approach, to this case yields the following result.

5. *Hours of Work.* As reflected in the attached affidavits of counsel for Caldwell appellants, Richard B. Fields has rendered 280 hours of necessary services on this appeal (Fields Affidavit, Exhibit 1) and William E. Caldwell has rendered 70.25 hours of services (Caldwell Affidavit, Exhibit 1).

6. *Normal Billing Rates.* For comparable litigation on a non-contingent basis for fee-paying clients, Fields' regular billing rate is $60.00 per hour (Fields' Affidavit, paragraph 6), and Caldwell charges $90.00 per hour (Caldwell Affidavit, paragraph 9).

7. *Adjustments Upward.* The primary factor calling for an upward adjustment of the base fee in this case is the contingency factor. "[T]he most significant factor in these cases which....renders the routine hourly fee unreasonably low is the fact that the award [has been] contingent upon success." *Northcross, supra,* 611 F.2d at 638. Notwithstanding the unanimity of this Court's decision reversing the adverse judgment of the district court, it cannot be gainsaid that this appeal has been a highly contingent proposition. On this appeal, plaintiffs have been required to demonstrate that the district court's comprehensive decision, rejecting virtually all of plaintiffs' factual and legal contentions with respect to both liability and remedy, was wrong in its major premises. Not even through hindsight can it be argued that the path to ultimate victory was clearcut and free of risk. No reasonable litigant would view this appeal as anything but a high-risk undertaking. Accordingly, the determination of a reasonable fee for the Caldwell appellants "require[s] a substantial upward adjustment to compensate for the risk." *Northcross, supra,* 611 F.2d at 638; *see generally id.* at 638-39. We urge, therefore, that arriving at a reasonable fee

here necessitates an upward adjustment of at least 100% of the base hours-times-hourly-rate fee.[1]

8. *The Reasonable Fee.* In accordance with the foregoing analysis, the Court should compute the reasonable fee for counsel for the Caldwell appellants as follows:

Attorney	Hours	Hourly Rate	Base Fee	Total Fee With Upward Adjustment of 100%
FIELDS	280	$60.00	$16,800.00	$33,600.00
CALDWELL	70.25	$90.00	$ 6,322.50	$12,645.00
			$23,122.50	$46,245.00

9. In addition to the fees set forth above, the Caldwell appellants are due to recover in this Court so much of their costs as are governed by FED. R. APP. P. 39(c). Those costs, amounting to $1,716.97, are itemized in Exhibit 2 to the Fields Affidavit. (This amount does not include such out-of-pocket expenses as those necesarily incurred for lodging and travel, *Northcross, supra,* 611 F.2d at 639-40, nor those mentioned in FED. R. App. P. 39(e), all of which are properly recoverable in the district court.)

WHEREFORE, for the foregoing reasons, Caldwell appellants move the Court for an award of $1,716.97 in costs and $46,245.00 in reasonable attorneys' fees.

Dated: 31 March 1980

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[1]In cases of considerably less magnitude and contingency this Court has approved upward adjustments of 25% (*DiSalvo* v. *Chamber of Commerce of Greater Kansas City,* 568 F.2d 593 (8th Cir. 1978)) and 30%. *Cleverly* v. *Western Elec. Co., Inc.,* 450 F. Supp. 507, 512 (W.D. Mo. 1978), *aff'd,* 594 F.2d 638, 642 (8th Cir. 1979).

Respectfully submitted,

/s/ WILLIAM E. CALDWELL
RICHARD B. FIELDS
RATNER & SUGARMON
525 Commerce Title Bldg.
Memphis, Tennessee 38103

DAVID A. LANG
ST. LOUIS UNIVERSITY
SCHOOL OF LAW
221 North Grand
St. Louis, Missouri 63103

THOMAS I. ATKINS
SPECIAL COUNSEL,
NAACP
10 Post Office Square
Suite 610
Boston, Mass. 02109

Attorneys for Caldwell
Plaintiffs-Appellants

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 79-1468; 79-1470; 79-1471;
79-1477; and 79-1486

Craton Liddell, *et al.*,
Plaintiffs-Appellants,
and
Earline Caldwell, *et al.*,
Intervening Plaintiffs-Appellants,
v.
Board Of Education Of The City Of
St. Louis, *et al.*, and State Of
Missouri, *et al.*,
Defendants-Appellees.

Appeals From The United States District Court
For The Eastern District of Missouri
Eastern Division

AFFIDAVIT OF RICHARD B. FIELDS

IN THE:
COUNTY OF SHELBY: SS:
STATE OF TENNESSEE:

I, RICHARD B. FIELDS, being duly sworn according to law, state as follows:

1. I am the lead attorney for the Caldwell appellants in the above-styled and numbered appeals. I submit this affidavit in

support of appellants' application for an award of costs and reasonable attorneys' fees.

2. I am admitted to practice before the Supreme Court of Tennessee, the United States District Court for the Western District of Tennessee, and the United States Courts of Appeals for the Sixth and Eighth Circuits. I am presently an associate with the law firm of Ratner & Sugarmon in Memphis, Tennessee.

3. As a law student and a licensed attorney, I have been involved primarily in the litigation of civil rights cases in the federal courts. Upon graduation from the University of Tennessee School of Law in March 1976 I immediately began work on the trial preparation of the Columbus, Ohio school desegregation cases. [*Penick* v. *Columbus Board of Education*]. In the spring of 1977 I served as associate counsel for a post-plan hearing in the Memphis school desegregation case. [*Northcross* v. *Board of Education of the City of Memphis*]. Prior to attending law school, I was employed as a program associate with the NAACP Legal Defense Fund for two years with responsibilities for monitoring school desegregation cases.

4. Since June 1977, after this Court's remand of this case, I have been the primary trial counsel for the Caldwell plaintiffs. I was solely responsible for most of the pre-trial preparation and lengthy trial that extended over a period of approximately one year. I prepared all the post-trial pleadings and authored the appellate briefs with the assistance of William E. Caldwell. (I have worked on this case under the overall supervision of the Office of General Counsel of the NAACP Special Contribution Fund, initially responsible to the Honorable Nathaniel R. Jones and then, after his appointment to the Court of Appeals for the Sixth Circuit, to Special Counsel Thomas I. Atkins; no fees are requested for their supervisory roles in these appeals.) I believe that my prior experience in school desegregation cases contributed significantly to a substantial savings of time and resources in this case and to the promptly-rendered critical decision of this Court on March 3, 1980.

5. Because of my intimate knowledge of the record, I was able to efficiently delineate the issues for appeal and write the briefs. In addition to the contents of the briefs as filed, I also prepared an extensive statement of facts which, in collaboration with Thomas I. Yannucci, counsel for the United States, was ultimately incorporated into the Joint Statement of Facts that appeared in the brief for the United States. The Joint Statement was utilized so as not to burden this Court with duplicative factual statements. My co-counsel on appeal, William E. Caldwell, reviewed my drafts and prepared the section in our opening and reply briefs on state liability. During the writing of the briefs and prior to oral argument, I also conferred with Norman J. Chachkin, an attorney with the Lawyers' Committee for Civil Rights Under Law and an experienced school desegregation litigator in this Circuit.

6. In preparation of this affidavit, I have reviewed my contemporaneous time records and the expense accounts kept by Ratner & Sugarmon in the ordinary course of business. Exhibit 1 hereto is an itemization of the services rendered by me to the Caldwell plaintiffs at the appellate level. Exhibit 2 hereto is a list of costs that were expended on appeal which are covered by Rule 39(c), Federal Rules of Appellate Procedure. My normal rate for services rendered in similar non-contingent litigation for a fee-paying client is $60.00 per hour.

Dated: 30 March 1980

/s/ RICHARD B. FIELDS

SWORN TO AND SUBSCRIBED before me, a Notary Public, this 30 day of March 1980.

/s/ Rosalyn Vaughn
NOTARY PUBLIC

My Commission Expires:
My Commission Expires December 27, 1983

EXHIBIT 1

SERVICES RENDERED BY RICHARD B. FIELDS IN APPELLATE PROCEEDINGS

Date	Description of Services	Hours
4-26-79	Phone Conversation with Tom Yannucci re: appeal date	.7
5-7-79	Phone call to Tom Yannucci	1.2
5-10-79	Phone call to Tom Yannucci re: timing of appeal	.7
5-30-79	Phone call to Tom Yannucci re: Adams Motion	.5
6-4-79	Prepare notice of appeal, letter to clerk, appeal bond - review new rules of appellate procedure	1.0
6-11-79	Review rules of appellate procedure and Eighth Circuit Rules re: designation and transmission of record	2.0
6-12-79	Review all pleadings to designate exhibits	2.5
6-13-79	Review transcript for designation	3.5
6-14-79	Phone call from Tom Yannucci, C. Atwood re: preparation of appendix	.4
6-18-79	Phone call from C. Atwood re: briefing schedule	.3
7-3-79	Read Columbus and Dayton U.S. Supreme Court Opinions	1.6
7-4-79	Review transcript cites and finish designation of record	2.5

7-12-79	Read and respond to U.S. Motion for Injunctive Relief	1.2
7-15-79	Research and analyze Judge Meredith's decision	5.0
7-17-79	Review Briefs of all parties	3.7
7-18-79	Dissect Judge Meredith's decision	5.0
7-19-79	Work on brief - preliminary work, procedural history	5.8
7-22-79	Work on brief	3.5
7-24-79	Work on brief - read NAACP Dallas brief	3.0
7-29-79	Work on brief	3.0
7-30-79	Work on brief	1.5
7-31-79	Work on brief	2.3
8-1-79	Work on brief	7.5
8-2-79	Work on brief, phone calls to Tom Yannucci, letter to W. Buckner	3.5
8-3-79	Prepare response to Adams motion, phone calls to Tom Yannucci; conference with law clerk about comparison of Judge Meredith's opinion and board's trial briefs	2.3
8-4-79	Work on brief	3.2
8-5-79	Work on brief; read index; letter to Mr. Rund	3.7
8-6-79	Phone calls to Tom Yannucci, W. Buckner; conference with Bill Caldwell, work on brief	2.5
8-7-79	Work on brief	4.5

8-8-79	Proofread draft of statement of facts, call Wayne Buckner, Tom Yannucci	2.5
8-9-79	Work on argument	1.3
8-10-79	Read orders, call Tom Yannucci, work on argument	3.2
8-11-79	Work on argument	5.5
8-13-79	Work on argument	3.4
8-15-79	Work on argument	5.5
8-16-79	Work on argument	3.0
8-19-79	Work on brief	2.0
8-22-79	Telephone call to Tom Yannucci re: statement of facts, work on brief, conference with Bill Caldwell, research on Addendum	2.8
8-23-79	Work on brief - revise; phone calls to J. Stewart, Tom Yannucci; motion to Eighth Circuit	3.5
8-24-79	Work on brief; Phone call to Eighth Circuit; Phone call from Tom Yannucci; Conference with Bill Caldwell	2.5
8-25-79	Work on facts with Bill Caldwell	1.2
8-27-79	Phone call to Tom Yannucci and get together state information; Read LDF Dallas brief, go over statement of facts	2.5
8-29-79	Redraft brief	3.5
8-30-79	Review brief with Norman Chachkin, make changes; phone call to Tom Yannucci; meet with Bill Caldwell re: state liability	2.7
8-31-79	Revise brief; phone call to Tom Yannucci	3.3

9-3-79	Work on brief	5.0
9-4-79	Redraft brief	10.0
9-5-79	Finish brief	5.0
9-10-79	Read other plaintiff's briefs	1.8
9-12-79	Phone call to Tom Yannucci re: Board's Extension of Time Motion	.5
11-14-79	Skim Brief of Board; Phone call to Tom Yannucci re: reply strategy	1.5
11-20-79	Phone calls from Tom Yannucci Phone call to Robert Tucker	.6 .2
11-26-79	Two letters to Robert Tucker	.3
11-27-79	Phone call to Bill Lamson re: location of raw data	.2
11-28-79	Phone call to Tom Yannucci re: Adams Brief	.2
11-28-79	Response to Adams' Enlargement Motion	.8
11-28-79	Read NAACP brief in Detroit school case (6th Cir.)	.7
11-30-79	Analyze Board's brief Phone call to Tom Yannucci	2.0 .2
12-2-79	Finish reading and analyzing Board's brief	2.0
12-3-79	Read Adams' brief, review U.S. Supreme Ct. Opinion in *Board of Educ.* v. *Califano* Phone call to Tom Yannucci	3.1 .2
12-4-79	Phone call to Tom Yannucci re: Adams' "reply" brief, Room-grade reports, capacity data	.4

12-5-79	Phone calls to Tom Yannucci, and W. Buckner re: continuance	.2
12-12-79	Phone call to Tom Yannucci re: Extension of Time	.6
	Phone call to Anthony Sestric	.3
12-13-79	Phone calls to W. Buckner, Tom Yannucci	.3
	Work on reply brief	1.9
12-14-79	Work on reply brief	1.2
12-15-79	Work on reply brief	1.3
12-16-79	Work on reply brief	5.8
12-17-79	Work on reply brief	5.6
12-18-79	Work on reply brief	6.7
12-19-79	Work on reply brief	9.2
12-20-79	Work on reply brief	4.2
12-21-79	Re-work brief, check citations and proof-read	4.0
12-26-79	Read Yannucci reply brief, city reply brief	.5
	Phone call to Tom Yannucci	.1
	Read Ninth Circuit Opinion in *Diaz*, Sixth Circuit Opinions in *Reed* v. *Rhodes* Trilogy	1.0
12-27-79	Phone calls to Tom Yannucci, NAACP National Office re: appellate argument	1.0
12-31-79	Read Eighth Circuit Order and phone call to Tom Yannucci	.2
1-2-80	Call Duke University	.1
	Read Adams letter	.1
	Research on Eighth Circuit school desegregation cases	5.5

1-3-80	Phone call to Tom Yannucci re: scheduling of oral argument	.4
	Research	3.0
1-4-80	Phone call from Tom Yannucci	.2
1-5-80	Research on new literature in school desegregation	3.0
1-6-80	Research - Symposium at Duke University in Law and Contemporary Problems	3.0
	Review Eighth Circuit school desegregation cases	3.2
1-8-80	Phone calls to Tom Yannucci, Bill Lamson, Dr. DeClue of St. Louis Branch NAACP, Eighth Circuit Clerk's office	1.3
	Research on Eighth Circuit school desegregation cases	2.7
1-9-80	Research on Eighth Circuit school desegregation cases	1.5
1-10-80	Research, phone calls from Tom Yannucci, Norman Chachkin	3.1
	Read and analyze *Kemp* opinions	2.0
1-11-80	Research on school desegregation case re: remedy	2.0
1-11-80	Travel to Washington	3.0
1-12-80	Confer with Tom Yannucci in Washington, D.C.	5.0
	Research in Washington, D.C.	1.5
1-13-80	Confer with Norman Chachkin in Washington, D.C.	2.5
	Travel to Memphis	3.0
	Work on argument in Memphis	4.5

1-14-80	Research, Practice Moot Court	5.7
1-15-80	Travel to St. Louis	2.0
	Meet with Plaintiffs' Attorneys	4.0
	Re-read Brief, Write Outline of Oral Argument	2.5
1-16-79	Oral Argument in Eighth Circuit	4.7
	Meet with Dr. DeClue and David Lang	1.0
	Travel to Memphis	2.0
3-30-80	Preparation of Fee Application	3.2
	TOTAL	280.0

EXHIBIT 2

STATUTORY COSTS INCURRED BY CALDWELL PLAINTIFFS IN APPELLATE PROCEEDINGS

Date	Description of Costs	Amount
	Xerox Expenses:	
	(a) Appellate Brief 29 Copies (88 pages) = 2,552 at $.15 a copy	$382.80
	(b) Covers for Appellate Brief	14.15
	(c) Reply Brief: 29 copies (55 pages) = 1,595 copies at $.15 a copy	239.25
	(d) Covers for Reply Brief	11.66
6-12-79	Docketing Fee Eighth Circuit Court of Appeals	50.00
10-5-79	Copying Expenses paid to the U.S. District Court Re: Original record filed with the Eighth Circuit Court of Appeals	817.50
12-18-79	Copying Expenses paid to Anthony Sestric Re: Additional Designation of the Original Record Filed with the Eighth Circuit Court of Appeals	201.61
	TOTAL	$1,716.97

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 79-1468; 79-1470; 79-1471;
79-1477; and 79-1486

Craton Liddell, et al.,
Plaintiffs-Appellants,

and

Earline Caldwell, et al.,
Intervening Plaintiffs-Appellants,

v.

Board of Education of the City of St. Louis, et al.,
and State of Missouri, et al.,
Defendants-Appellees.

Appeals From The United States District Court
For the Eastern District of Missouri
Eastern Division

AFFIDAVIT OF WILLIAM E. CALDWELL

STATE OF TENNESSEE:

SS:

COUNTY OF SHELBY:

WILLIAM E. CALDWELL, being duly sworn, deposes and says:

1. I am one of the attorneys for the Caldwell appellants (intervening plaintiffs below) in the above-styled and numbered

appeals. I have prepared this affidavit in support of the Caldwell appellants' motion for an award of costs incurred and attorneys' fees for services rendered in these appeals.

2. I am a partner (and have been since the spring of 1974) in the Memphis law firm of Ratner & Sugarmon [hereinafter, "the Firm"], which has performed the services to intervening plaintiffs referred to herein and in the affidavit of Richard B. Fields. From October 1974 until October 1978 I was on leave of absence from the Firm working with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C.

3. The Firm was formed in 1967. One of the principal purposes of this partnership was to attempt to help fill the void extant in the Memphis Bar with respect to providing effective legal representation to civil rights plaintiffs, especially those complaining of racial discrimination. Consequently, over the course of its existence, at least 40% of the Firm's lawyer-hours have been expended in the representation of civil rights plaintiffs; and the great majority of these cases have been handled without any, or at best token, fixed-fee retainers. The Firm has also frequently associated with the NAACP Special Contribution Fund [SCF] (as in this case) and the NAACP Legal Defense and Educational Fund, Inc. [LDF] in the trial of school desegregation cases around the country. In such cases, including this one, SCF or LDF has underwritten the expenses of litigation and provided an additional per diem allowance to help defer the Firm's overhead, though such per diem allowances have never been adequate to compensate the Firm for its total overhead costs in these cases.

4. I was admitted to the Tennessee bar in mid-1970 and to the District of Columbia bar in early 1976. In addition, I am admitted to practice law, and have practiced law, in the United States District Courts for the Western District of Tennessee and the District of Columbia, the United States Courts of Appeals for the District of Columbia, Fifth, Sixth and Eighth Circuits, and the Supreme Court of the United States. My practice has been

devoted primarily to civil rights litigation in the federal courts, mostly in cases involving claims of racial discrimination. I have participated in the trial and appeal of numerous school desegregation cases, such as this one, in the United States District Courts for the Western District of Tennessee [*Robinson* v. *Shelby County Bd. of Educ.* and *Northcross* v. *Memphis Bd. of Educ.*], for the Middle District of Tennessee [*Geier* v. *Dunn* (Tennessee higher education case involving, *inter alia*, the location of the main campus for Shelby State Community College)], for the Eastern District of Michigan [*Bradley* v. *Milliken* (Detroit)], for the Western District of Michigan [*Higgins* v. *Grand Rapids Bd. of Educ.*], for the Southern District of Indiana [*United States* v. *Board of School Comm'rs of Indianapolis*], and for the Southern District of Ohio [*Brinkman* v. *Gilligan* (Dayton) and *Penick* v. *Columbus Bd. of Educ.*]. I have briefed and/or argued five of these cases (some more than once) at the appellate level. Moreover, I have attended a number of national school desegregation conferences and seminars and have otherwise acquired considerable knowledge about the subject of school desegregation. Last year I argued *Dayton II* (I had previously briefed *Dayton I* in the Supreme Court, and briefed and argued *Dayton II* in the Sixth Circuit) before the Supreme Court of the United States (decision rendered 2 July 1979).

5. From the fall of 1968 until my graduation from Memphis State Law School (where I was editor-in-chief of the law review) in 1970, I was employed by the Firm as a law clerk. During that time I worked extensively with Louis R. Lucas (a former partner in the Firm who had principal responsibility for a number of SCF and LDF school cases) in all major aspects of the Memphis school desegregation case, *Northcross* v. *Memphis Bd. of Educ.* By the time I was admitted to the Tennessee bar in 1970, therefore, I was intimately familiar with school desegregation litigation.

6. I have participated, either by representing a party or filing *amicus* briefs for the Lawyers' Committee, in at least eight

voting rights cases (six of which were before the Supreme Court). I have also conducted extensive research into the history of the Reconstruction Amendments to the Constitution and implementing legislation. While with the Lawyers' Committee I had primary responsibility for the preparation of major *amicus* briefs on these subjects; among the cases in which such briefs were filed are *Warth* v. *Seldin, Jones* v. *Hildebrandt, Hutto* v. *Finney, Monell* v. *New York City Dept. of Social Services* and *Regents of University of California* v. *Bakke.*

7. I also have extensive experience in the litigation of requests for attorneys' fees in civil rights cases, particularly issues arising under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988. I authored the Lawyers' Committee's *amicus* brief in *Hutto* v. *Finney* and co-authored the *amicus* brief in *Christiansburg Garment Co.* v. *EEOC.* I recently briefed and argued a large number of these issues for the plaintiffs in *Northcross* v. *Board of Educ. of Memphis City Schools,* 611 F.2d 624 (6th Cir. 1979). I have twice been qualified and testified as an expert witness on attorneys' fees in the Western District of Tennessee.

8. I have been familiar with the instant litigation since 1975 when the Caldwell plaintiffs first sought to intervene in the district court, later allowed by this Court (*Liddell* v. *Caldwell,* 546 F.2d 768 (8th Cir. 1976), *cert. denied,* 433 U.S. 914 (1977)), through the trial and the ultimate adverse decision rendered by the district court in 1979. During this time I frequently consulted on various issues with intervenors' principal counsel, first Louis R. Lucas (until recently a partner in the Firm), and later Richard B. Fields (an associate with the Firm), who has considerable school desegregation experience and who has managed the laboring oar for the Caldwell plaintiffs. I became actively involved in this case on the appeal to this Court leading to the *en banc* opinion and judgment filed 3 March 1980. I was primarily responsible for preparation to the state-liability parts of the Caldwell opening and reply briefs, and I assisted Richard B.

Fields in the preparation of the remaining parts of the briefs. As itemized in Exhibit 1, attached hereto, I have rendered 70.25 hours of necessary services in connection with this appeal.

9. My established rate for similarly complex federal litigation handled on a non-contingent basis for fee-paying clients is $90.00 per hour.

Dated: 30 March 1980

/s/ WILLIAM E. CALDWELL

SWORN TO AND SUBSCRIBED before me, a Notary Public this 30th day of March 1980.

/s/ ROSALYN VAUGHN
NOTARY PUBLIC

My Commission Expires:
My Commission Expires December 27, 1983

EXHIBIT 1

SERVICES RENDERED BY WILLIAM E. CALDWELL

Date	Description of Services	Hours
1. 8-25-79	Review of Rich's draft statement of case for 8th Cir. brief	3.0
2. 8-26-79	Review of Rich's draft argument and comments	4.5
3. 8-30-79	Research on state-liability issues	3.5
4. 9-1-4-79	Research on state liability issues and preparation of brief argument on state's liability	25.5

5.	12-20-79	Preparation of state liability section of reply brief	10.5
6.	1-10-80	Discussion with Richard Larson re: strategy; discussion with Rich Fields	1.5
7.	1-11-80	Strategy discussion with Rich Fields	.75
8.	1-14-80	Discussion with Rich Fields and moot court	3.5
9.	1-15-80	Travel to St. Louis and preparation with Rich Fields for oral argument	6.5
10.	1-16-80	Oral Argument in 8th Circuit (4.5 hrs) and return travel (2 hrs.)	6.5
11.	3-30-80	Preparation of affidavit and motion in 8th Cir. for costs and attorneys' fees	4.5
		TOTAL	70.25

CERTIFICATE OF SERVICE

I, RICHARD B. FIELDS, hereby certify that one copy of the foregoing Motion and attached affidavits were hand-delivered this 31st day of March 1980 to the following counsel of record:

Joseph S. McDuffie, Esq.
408 Olive Street, Suite 715
St. Louis, Missouri 63103

Paul B. Rava, Esq.
Lashly, Caruthers, Thies,
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Assistant Attorney General
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Anthony J. Sestric, Esq.
1015 Locust Street
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St. Louis, Missouri 63101

Craig Crenshaw, Esq.
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

/s/ RICHARD B. FIELDS

APPENDIX 2
Order of the Court of Appeals
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 79-1468

Janice Adams and Jack Adams, Jr., minors, by Jerrianne Adams, their natural guardian and next friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, minors, by Catherine Neel, their natural guardian and next friend, and Catherine Neel; Mary Edington and Susan Edington, minors, by Horace Edington, their natural guardian and next friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

Appellants,

v.

United States of America,

Appellee,

Board of Education of the City of St. Louis, and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendents) and Robert E. Wentz (Superintendent of Schools),

Appellees.

No. 79-1470

United States of America,
Appellant,

v.

City of St. Louis,
Appellee,

Janice Adams and Jack Adams, Jr., minors, by Jerrianne Adams, their natural guardian and next friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, minors, by Catherine Neel, their natural guardian and next friend, and Catherine Neel; Mary Edington and Susan Edington, minors, by Horace Edington, their natural guardian and next friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,
Appellees,

Board of Education of the City of St. Louis, and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendents) and Robert E. Wentz (Superintendent of School),
Appellees.

No. 79-1471

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, G. Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

Appellants,

v.

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendents) and Robert E. Wentz (Superintendent of Schools),

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education,

Appellees.

Appeals from the United States District Court for the Eastern District of Missouri.

No. 79-1477

Craton Liddell, a minor, by Minnie Liddell, his mother and next friend, and Minnie Liddell, Joanna Goldsby, a minor, by Barbara Goldsby, her mother and next friend, and Barbara Goldsby, Deborah Yarber, a minor, by Samuel Yarber, her father and next friend, and Samuel Yarber, Nathalie Moore, a minor, by Louise Moore, her mother and next friend, and Louise Moore, Rachelle LeGrand, a minor, by Lois LeGrand, her mother and next friend, and Lois LeGrand, on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

Appellants,

v.

Board of Education of the City of St. Louis, and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendents) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education,

Appellees.

No. 79-1486

City of St. Louis,

Appellant,

v.

United States of America,

Appellee,

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendents) and Robert E. Wentz (Superintendent of Schools),

Appellees.

Filed: April 28, 1980

Order of the Court by CHIEF JUDGE LAY, JUDGE HEANEY, JUDGE BRIGHT, JUDGE ROSS, JUDGE STEPHENSON, JUDGE HENLEY, JUDGE McMILLIAN and JUDGE ARNOLD, Circuit Judges.

This matter is before the Court on application of counsel for the appellants for attorneys' fees and expenses incurred in the appeal of this case.

1. Appellants Caldwell, et al, were represented by Richard B. Fields, William E. Caldwell and David A. Lang. These attorneys filed a joint brief. They requested attorneys' fees and expenses as follows:

Attorney	Hours		Hourly Rate		Base Fee		Multiplier[1]		Total
Fields	280.00	X	$60.00	=	$16,800.00	X	2	=	$33,600.00
Caldwell	70.25	X	$90.00	=	$ 6,322.50	X	2	=	$12,645.00
Lang	44.00	X	$90.00	=	$ 3,960.00			=	$ 3,960.00
									$50,205.00
								Expenses . . .	$ 1,716.97
									$51,921.97

2. Appellants Liddell, et al, were represented by the law firm of McDuffie and Russell. These attorneys filed a separate brief on behalf of appellants Liddell, et al. They requested attorneys' fees and expenses as follows:

Attorneys	Hours		Hourly Rate		Total
McDuffie & Russell	291	X	$95.00	=	$27,645.00
				Expenses . . .	$ 392.10
					$28,037.10

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[1] Attorneys Fields and Caldwell have requested a 100% upward adjustment of the base fee because of the difficulty of the questions presented and the contingent nature of the case.

3. The United States of America was permitted to intervene and filed briefs that essentially supported the positions advocated by the appellants.

4. It is the order of the court that attorneys' fees in the sum of $18,000 be allowed to counsel for appellants *Caldwell,* et al, together with costs in the sum of $1,716.97. This fee is computed on the basis of $60.00 per hour for 300 hours of time spent in research, brief writing, preparation for oral argument and oral argument. Counsel may divide the fee as they see fit.

5. It is the order of the Court that attorneys' fees in the sum of $6,000 be allowed to counsel for appellants *Liddell,* et al, together with costs in the sum of $60.00. This fee is computed on the basis of $60.00 per hour for 100 hours of time spent in research, brief writing, preparation for oral argument and oral argument.

6. In determining the number of hours and the hourly rate to be allowed, we have taken into account the following factors: some duplication in effort by counsel, the complexity of the case and its contingent nature, the support received from the Department of Justice on behalf of the United States and the quality of the work performed.

7. The State of Missouri shall be responsible for the payment of one-third of the attorneys' fees and costs assessed, and the Board of Education of the City of St. Louis shall be responsible for the payment of the remaining two-thirds.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.